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Justice to the author requires the fullest acknowledgment of the painstaking care with which the work has been done. At the bottom of page 64, in the right hand column, the sentence "A had replied," should evidently read "B had replied"; but the printing and proof-reading are in general excellent. Moreover, the book abounds in clear, accurate and concise statements of law. Take, for example, the following admirable statement of the rule governing the admission of declarations which are part of the *res gesta*:

"The declarations must be substantially *contemporaneous* with the act; *i. e.*, made either during, or immediately before or after, its occurrence—but not at such an interval as to allow of fabrication, or to reduce them to the mere narrative of a past event," (p. 17).

It will be noted that this statement would exclude what one called "spontaneous exclamations," when made at a considerable interval after an event though still under its influence, although such exclamations are admissible according to some American authorities.<sup>10</sup> In regard to such declarations, the author calls our attention to the fact that even the extreme case of *Reg. v. Bedingfield*<sup>11</sup> has since been approved in England.<sup>12</sup> Without going so far as *Bedingfield's Case*, it may be said that the general tendency of the English courts in requiring the practical contemporaneousness of the declaration and the act it accompanies seems sound.<sup>13</sup>

Taken as a whole, the book is far superior in its method of treatment to that employed by Stephen in his *Digest*; indeed, Stephen's book is about the worst book possible for a student to use, if he wishes to acquire training as opposed to mere information. Mr. Phipson is to be congratulated on having made his book far more than a series of rules unaccompanied by the reasons on which they rest. Indeed, it may fairly be said that the book is the best short treatise of evidence that has appeared in England.

While the author has stated in his title that the book is "for the use of students," the book ought also to be of use to the practitioner for quick reference in the course of trials. For the student, too, the book will be of great value, if it spurs him to go beyond the book into the authorities, and if he uses it not merely as material to be memorized, but as a statement of principles which he must learn to verify and to criticize by further study of the sources of the law.

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WILLISTON ON CONTRACTS. By CLARENCE M. LEWIS. New York: BAKER VOORHIS & COMPANY. 1922. Vol. V, pp. xi, 725.

The practice of preparing and publishing books of forms to accompany text books on various legal subjects has been a more or less constant factor in law book making for many years, but has seemed to grow in popularity in recent years. It has been deemed useful for the practitioner to have at hand in connection with text books containing the substantive law on a given legal topic, the forms, claimed to have been authenticated by the courts in connection with their decisions, by the use of which practitioners may invoke and secure the protection of the rules of law purported to be set forth in the text books. Such books of forms should and do serve a useful purpose; not perhaps the purpose for which some practitioners erroneously believe they have been designed; namely, to save them the time.

<sup>10</sup> *E. g., People v. Del Verme* (1908) 192 N. Y. 470, 85 N. E. 690.

<sup>11</sup> (1879) 14 Cox C. C. 341.

<sup>12</sup> *Rex v. Christie* [1914] A. C. 545.

<sup>13</sup> See *supra*, footnote 9.

trouble and thought which should be put upon the task of preparing any written form of papers, whether pleadings, deeds, mortgages, contracts and the like, but useful as suggestive bases of study by the practitioner of his own particular and special problem, so that he may on the one hand avoid the danger of overlooking a point to be covered in his drafting of the document, and on the other, that he may be furnished with suggestive phraseology for the formulation of those points which he has in mind to cover.

If books of forms are used in any other way than as suggestive indications of what points should be covered and in general in what form they should be phrased, in dealing with the preparation of legal papers, then such books would not only defeat their own object, but their use would be calamitous for such practitioners as should thus abuse the aid sought to be extended to them.

The book of contract forms under consideration, although it is issued by the same publishers who published the four volumes of *Williston on Contracts* was not prepared by Mr. Williston for reasons which he outlines in his introduction to this book of forms, which is designated "Volume V" of the set going under the title above mentioned. Mr. Williston says:

"It was early recognized in planning for the *Treatise on the Law of Contracts* which I have written, that it was desirable, if not essential, that a book of forms should form a part of the undertaking. I did not think it desirable, however, that I should personally undertake this part of the work. It seemed better that one having fuller access to the files of large offices should be asked to prepare a volume of modern forms. The style of legal draftsmanship has changed greatly in recent years, gaining in conciseness and clearness. To secure the benefit of this improved draftsmanship and also to avoid the danger of presenting forms which had not survived the test of experience, it was necessary to obtain forms which, for the most part at least, had been in successful recent use.

"Mr. Lewis, who has prepared this volume, has been in a position to obtain use of a great number of forms which fulfill these requisites, and I am glad to have the volume prepared by him associated with those which I wrote."

Mr. Lewis has succeeded well in compiling a number of authenticated forms covering those topics in the law of contracts which present the greatest difficulties to the draftsman. He has included in his book forms for arbitration agreements, buildings contracts, commercial contracts, corporate agreements, stock transactions, employment contracts, contracts for dramatic productions, contracts between author and publisher, labor protocols, leases, motion picture contracts, partnership agreements, contracts affecting real property, separation agreements, and others. The forms which are thus offered are none of them original, but are forms which have been adopted as the result of the experience, either of institutions having to deal repeatedly with the particular subject or by law offices which have had wide experience in the particular matters dealt with in the forms. Perhaps, from the standpoint of safety and conservatism it is a virtue of the book that original construction of forms has not been attempted.

Various stipulations in the respective contracts are indexed clearly and under headings well calculated to identify the subject-matter of the provisions, and should afford a means of easy reference to particular clauses of special contracts. Only in one instance, as far as can be readily observed, has the author placed the index of clauses at the head of the form, and that is in connection with the form of a "long time lease with provisions for erection of building by tenant." It would have added to the convenience of the book if such an index had been placed at the head of each of the forms embodied in the volume, at least in connection with those forms which run on for considerable length.

The author has been at great pains not only to cite decisions of the courts in which the forms provided are claimed to have been authenticated, but gives in connection with each of the forms the sections of the substantive law embodied

in the text book, in connection with which these forms are intended to be used. The impression should not be gained, however, that the forms thus provided are not to be of service quite apart from the text book of which they are called "Volume V." They will answer a purpose of the practitioner generally.

Frequently, the practitioner when he has a difficult paper, particularly a contract, to draw will assemble for his convenience and his guidance such previously used forms as he can secure from good sources. That process takes time and does not always result successfully. In the book under consideration, on the other hand, we have an excellent set of forms ready for use, supported as far as may be by the authority of those who have made special study of the questions involved and by decisions of the courts.

Notwithstanding the availability of any book of forms, it is to be remembered that one has to know the law just the same, in order to use the forms intelligently and to adapt them to the particular exigencies of the case. Every case has its separate and distinct features, and care must be taken not to rely exclusively upon any previously prepared forms, however carefully they may have been authenticated.

The book, however, is what it purports to be, serves well the office which its author had in mind and will doubtless receive the commendation which it deserves as a useful working tool in the lawyer's office.

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#### BOOKS RECEIVED

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